

MONTANA LEGISLATIVE HISTORY

Chapter 281 19 77

Bill H _____ S 358 Original bill & history C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Mar 09 ✓ C

Hearing Date(s) Feb 02 ✓ C

Mar 11 ✓ C

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Date Out Mar 11 ✓ C

Feb 02 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Senate BILL NO. *358*

INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE,
BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION *The* Chairman

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 92-411, R.C.M. 1947, CONCERNING THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT, BY REMOVING SUPERFLUOUS LANGUAGE, CLARIFYING THE COVERAGE OF CASUAL EMPLOYEES, AND CLARIFYING THE COVERAGE OF STUDENTS ENROLLED IN VOCATIONAL REHABILITATION OR OTHER ON-THE-JOB TRAINING COURSES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 92-411, R.C.M. 1947, is amended to read as follows:

"92-411. Employee and workman defined. (1) "Employee" and "workman" are used synonymously and mean every the terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including the terms include aliens and ~~also including~~ minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of

quasi-public or private corporations while rendering actual service for such corporations for pay, ~~including city and town firemen highway patrolmen police officers county sheriffs deputy sheriffs constables truant officers and all peace officers also all public officers and their deputies assistants and employees but excluding any person whose employment is both casual and not in the courses of the trade business profession or occupation of his employer unless such casual employees as defined by 92-536 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law in which case all employees are included whether their employment is casual or otherwise and also excluding any employee engaged in household or domestic service for these casual employments, as provided in 92-202.1(2).~~

(2)(b) "Employee" also means a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307, and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program and any person receiving vocational rehabilitation training or other on-the-job training under any state or federal vocational training program, whether or not under any appointment or contract of hire with an "employer" as

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 2, 1977

The tenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROW CALL: All members present with Senator Goodover excused.

CONSIDERATION OF SB 186: An act for providing penalties for filing delinquent contribution reports under the Unemployment Compensation Law.

Harold Kansier, representing Employment Security Division, introduced this bill to the committee. At the present time, the law does not provide for a penalty for late filing. There is an average of 1400 employers a quarter who are delinquent in the filing of reports. A penalty for filing a late report should reduce the number of late reports. These reports are necessary to establish the tax liability and to provide wage credit information for the establishment of benefit eligibility.

Interest charge of 1/2 of 1 percent at the present time is a very low interest charge. This bill would provide a \$10 or 10% penalty, whichever is greater. Increased penalty assessment hopefully would provide for more prompt payment of contributions.

Fred Barrett, representing the Employment Security Division, also appeared in support of this bill. Mr. Barrett explained the process of penalizing a employer. If it is the first time an employer has missed a filing date, in good faith judgment, he will decide whether or not to fine him.

Discussion was then held by the committee.

Senator Lowe moved that Senate Bill 186 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 187: An act to amend sections to avoid the possibility of double jeopardy.

Fred Barrett, of Employment Security Division, introduced this bill to the committee. The present law provides that a person shall be punished by a fine of not less than \$50 or more than \$500, or by imprisonment for not less than three days or more than thirty days. He is disqualified from benefits for a period of 10 to 52 weeks. This is double jeopardy. No person should be penalized twice. This section of the law comes under scrutiny of federal requirements. They have asked us to amend the law and to get rid of this double jeopardy penalty.

In either circumstance, the employer is required to repay the division either directly or as authorized by the division.

Moody Brickett, representing the Employment Security Division, also appeared in support of this bill. No case in the country contends to double jeopardy. Criminals should be punished, but they don't have to be punished too heavily. Knowing that the fine is only \$50, most people will plead guilty without advice of an attorney. The question is whether or not you people think it is right to penalize them under the present double jeopardy law. This bill would provide that you avoid the possibility of double jeopardy.

Chad Smith, representing the Unemployment Compensation Advisory, appeared in opposition to this bill. It is a very simplified area in the relationship that the State of Montana has with the public. The people are concerned with whether the unemployment funds are being abused. Double jeopardy means that you are twice being tried for the same crime. This statutory has never been jeopardy to the basis of double jeopardy.

Mr. Smith suggested that the following amendments be made. Amend page 2, line 4. Strike: "or", Insert: "and". Amend page 2, line 23. Following: "entitled" Insert: "or by a combination of both". The penalty was intended to be either or both.

Discussion was then held by the committee. A decision was deferred until later so the committee could look the proposed amendments.

CONSIDERATION OF SB 357: An act requiring Workers' Compensation policies written by private insurance carriers be written on a continuous basis until prior notice of termination has been submitted.

Senator Smith moved that SB 357 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 358: An act concerning the definition of employee under the Workers' Compensation Act.

Senator Himsel moved that SB 358 DO PASS. The motion carried unanimously.

ADJOURN:

There being no further business, the meeting was adjourned at 10:45 a.m.


Robert E. Lee, Chairman

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2/2

[illegible]

March 9, 1977

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

A meeting of the House Labor and Employment Relations Committee was held on Wednesday, March 9, 1977 at 10:00 a.m. in Room 225 of the State Capitol. All members were present with the exception of Reps. Lynch, Kanduch, Ellerd and Dasinger.

The first bill to be heard was SENATE BILL 357. Senator Lee explained that this was another committee bill from the Senate Labor Committee. He then introduced to the committee Mr. Norman Grosfield, Division of Workers Compensation, Dept. of Labor. Mr. Grosfield stated that the bill would require new companies writing workers compensation insurance in Montana to write continuous coverage. At present, they write coverage from year to year and they have to give the Division notice of who they are covering. If they write the coverage on a continuous basis until the employer is cancelled or the policy is terminated, this will be cleared up. The interest groups involved with the insurance companies have worked with him on this format. One problem which had just been pointed out to him occurs on page 2, line 16. Apparently the word "until" should be "before". Glenn Drake, American Insurance Corp., then testified in support of the bill and the amendment.

There were no opponents to SENATE BILL 357. Senator Lee closed. Questions were asked. Rep. Turner had a problem with the cancellation notice time period portion of the bill.

SENATE BILL 358, another Senate Labor Committee bill, was then heard. Senator Lee also explained this bill. There have been problems with defining the term "casual employee". Mr. Norman Grosfield then took over the testimony. At present the law is so broad that the state in essence could have all of its students in vocational rehabilitation. Should a student be considered, in a general sense, as an employee of the school? In fact, the present law does cover them in this manner, in certain classroom settings. The Superintendent of Public Instruction's office is bewildered with this problem and suggested amending the law to clarify the situation. The domestic service deletion in this bill would create a problem; he had just had this pointed out to him. Another bill concerning this matter will probably not pass. He therefore suggested that on page 2, line 16 after the period the bill should have inserted in it "Coverage is not applied to household or domestic service.". Glen Drake then spoke; his association supports this bill, and the amendment.

Gordon Warner, State Superintendent's office, then spoke in opposition to the bill, until he had time to get some clarification on the proposed amendment. They are not asking for coverage of

students in high school programs, or for athletics. However, they fear losing coverage for the vo-tech center students. These students are in classrooms but they are dealing with machinery, and other on-the-job types of activities also take place. \$41,000 was spent last year to cover those students in the five vo-tech centers. To get the same type of coverage, if they were to go to a private carrier, would cost about \$160,000, if they could get it at all. Therefore, the students would have to pay an excessive amount for coverage or some programs would have to be stopped to take care of the added expense. Jeff Janke, from the student's viewpoint, then spoke. He attends the Helena Vo-Tech Center. He agreed that the classes which are similar to on-the-job situations should be covered, but that industrial accidents should not extend to athletics. Bill Korizek, Director of the Helena Vo-Tech, then spoke. He also spoke for the other four vo-tech centers in the state. These centers do apprenticeship training; if their students in these same types of situations in the classrooms were not covered, it would be unfair. He also stressed that the vo-tech centers adhere to strict safety rules and regulations. The risk lies in the classrooms just as it does in the working world. Larry Key, Board of Public Education, added that if this bill would negatively affect the students, then the Board would like to go on record as opposed to the measure.

Questions were then asked concerning SB 358. At present, all vocational programs are covered, regardless of the educational level. The reason why the state coverage costs so much less is because workers compensation costs less. Thus far the \$40,000 figure has covered the state's risk. The chair then appointed a subcommittee to study the possibility of amending the bill further. Reps. Lynch, Williams, Porter and Kimble shall serve on this subcommittee, and were to report back to the full committee at the Friday, March 11 meeting.

SENATE BILL 234 was then heard. The sponsor, Senator Lee, explained that he had introduced this bill at the request of the Dept. of Labor, Employment Security Division. Mr. Moody Brickett, attorney from the Employment Security Division, had submitted a paper explaining procedures of appeal in other states; Senator Lee at this time presented it to the committee. Fred Barrett, Administrator of the Employment Security Division, then spoke. This is not an earth-shaking matter. Thus far no problems have arisen. The bill would distinguish between the Division and the Board, with the matters that go to court. It would give the Division, in case of a real difference of opinion based on interpretation of the law by the Board of Labor Appeals, the opportunity and legal recourse to challenge that decision in court. So far there has only been one decision which was disagreed with strongly, and at

COMMITTEE

Date 3/9/77

LSOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MEMORANDUM CONCERNING THE AMENDMENT OF SECTION 92-411,
R.C.M. 1947, CONCERNING THE DEFINITION OF EMPLOYEE
UNDER THE WORKERS' COMPENSATION ACT

The Division of Workers' Compensation proposes that Section 92-411, R.C.M. 1947, be amended by clarifying certain language in the section regarding the coverage of students in vocational rehabilitation programs.

It is suggested that certain superfluous language in paragraph (a) be removed. Such language concerns references to certain city, county and state employees. Such a delineation is not required and the coverage of these employees is adequately provided for in the definition of employer and employee under the Workers' Compensation Act. Also, certain language concerning the coverage of casual employees would be clarified and superfluous language regarding the coverage of household or domestic employees would be removed. Section 92-202.1 sets forth the coverage exception for household employees under the Workers' Compensation Act.

The Division proposes to remove the last portion of paragraph (b) that relates to coverage of individuals involved in vocational rehabilitation training programs. The current language is quite broad and appears to cover all students who are enrolled in a vocational rehabilitation program at all times. This language has created problems for school districts as well as the State Fund. The current language appears to require that students who are merely studying in classrooms must be covered. The Division does not believe that the Legislature intended for such broad coverage. The proposed section (c) would delineate when individuals enrolled in vocational rehabilitation and other on-the-job programs would be covered. The proposed amendment would specifically exclude coverage while students are on the premises of a public school. Thus, the questions concerning the coverage of students in the classroom would be clarified.

March 11, 1977

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

A meeting of the House Labor and Employment Relations Committee was held on Friday, March 11, 1977 at 10:00 a.m. in Room 225 of the State Capitol. All members were present.

The first bill to be heard was SENATE BILL 430, another committee bill from the Senate Labor Committee. Senator Goodover presented the bill to this committee. This bill was requested by the Division of Workers Compensation. The amendments made in the Senate had been agreed to by the Anaconda Company, as well as the AFL-CIO. Norman Grosfield, Administrator of the Workers Compensation Division, Dept. of Labor, then spoke. The current act was passed in 1959. At that time they tried to address all conceivable problems dealing with this area. This bill revises the entire act. There are substantive changes in the bill. Medical benefits were changed to comply with the current Workers Compensation Act. Expert panels of doctors are needed to review occupational disease claims and to examine the patients. The bill suggests a similar procedure, but it is clarifying the problems. The bill also suggests a panel for non-pulmonary occupational diseases. A memorandum was then distributed describing the bill section by section. Steve Williams, an attorney with the Anaconda Company, stood up in support of the bill. His company has reviewed this bill on two occasions before the session started in January. The procedures outlined in this bill will benefit not only the Workers Comp. Division, but all other parties involved. Ernie Post, AFL-CIO, rose on behalf of Mr. Jim Murry in support of the bill.

There were no opponents to SB 430. Questions were asked. The hearing was closed.

SENATE BILL 436 was then heard. The sponsor, Senator Towe, opened by explaining that he had introduced this bill because of concerns voiced to him in eastern Montana. People had been asking him, "How come we don't require those receiving welfare to work and do something constructive?" This bill extols the work ethic - it allows counties to create resource corps composed of volunteers and persons who are on public assistance. Creative job opportunities are emphasized in the bill, particularly projects which would help low income people or help beautify the county in which they live. Participation, with the exception of welfare recipients, would be completely voluntary. The Senate wants to require persons on unemployment to participate as well. However, Senator Towe at this time called the committee's attention to several proposed amendments which would delete this portion of the bill. The bill as amended would still mandate that employment offices encourage unemployment recipients to participate in the programs. The counties would be encouraged

March 11, 1977

The chairman entertained a motion to send SB 436 to the Rules Committee before taking action on it. Rep. Teague so moved; Rep. Williams seconded the motion. Discussion. Rep. Lynch asked whether there was enough feeling for the bill to warrant sending it to the Rules Committee. He would rather see HB 803 pass. He then moved that SB 436 BE NOT CONCURRED IN. Rep. Dassinger seconded the motion. Further discussion. Rep. Dassinger stated that he felt the portion of the bill providing that this be an "incentive program" would cost money to accomplish, in all areas. Rep. Teague rose in opposition to the motion. Question was then called for. Motion carried with Reps. Teague, Ellerd and Kanduch opposed.

SENATE BILL 430 was then acted upon. Rep. Williams moved that it BE CONCURRED IN. Rep. Turner seconded the motion. Motion carried unanimously. Rep. Williams agreed to carry the bill on the floor.

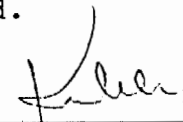
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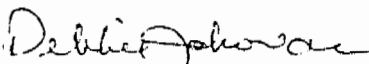
SENATE BILL 385 was acted upon. Rep. Lynch presented the Subcommittee Report. He explained several amendments which they had come up with. He then moved that the bill BE CONCURRED IN AS AMENDED. Rep. Williams seconded the motion; motion carried with Reps. Ellerd and Turner opposed. Rep. Lynch will carry this bill.

SENATE BILL 357 was then acted upon. Rep. Teague moved that it BE CONCURRED IN AS AMENDED according to the amendment Mr. Grosfield from the Dept. of Labor had suggested at the hearing on this bill. Rep. Baeth seconded the motion. Discussion. Motion carried with Rep. Sivertsen leaving a "no" vote. Rep. Lynch agreed to carry this bill, also.

SENATE BILL 234 received a motion that it BE CONCURRED IN. Motion carried unanimously; the Chairman agreed to carry this bill.

The meeting was then adjourned.



Chairman - Rep. Gary N. Kimble

Secretary

SENATE BILL NO. 358

INTRODUCED BY LABOR AND EMPLOYMENT RELATIONS COMMITTEE

LEE, CHAIRMAN

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 92-411, R.C.M. 1947, CONCERNING THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT, BY REMOVING SUPERFLUOUS LANGUAGE, CLARIFYING THE COVERAGE OF CASUAL EMPLOYEES, AND CLARIFYING THE COVERAGE OF STUDENTS ENROLLED IN VOCATIONAL REHABILITATION OR OTHER ON-THE-JOB TRAINING COURSES."

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(a) each person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, ~~including~~ The terms include aliens and ~~also including~~ minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public

officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, ~~including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, tenant officers and all peace officers, also all public officers and their deputies, assistants and employees, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, unless such Casual employees as defined by 92-436 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service for these casual employments, as provided in 92-202.1(2). HOUSEHOLD OR DOMESTIC SERVICE IS EXCLUDED.~~

(2) (b) ~~"Employee" also means~~ a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307, and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program, ~~and any person receiving vocational rehabilitation training, or other on-the-job training under any state or federal~~

~~vocational training program, whether or not under any appointment or contract of hire with an "employer" as defined in this title, and whether or not receiving payment from a third party; or~~

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school, postsecondary training center, or community college; OR

(d) STUDENTS ENROLLED AND IN ATTENDANCE IN PROGRAMS OF VOCATIONAL TECHNICAL EDUCATION APPROVED BY THE STATE BOARD OF PUBLIC EDUCATION AT DESIGNATED POSTSECONDARY VOCATIONAL TECHNICAL CENTERS.

~~(3)(2)~~ If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's ~~insurance carrier and the division~~

~~insurer~~ written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making, and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing "employee" to be ~~nine hundred dollars~~ ~~(\$900)~~ per month."

-End-